

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GAZPROM LATIN AMERICA	§ CASE NO. 4:14-MC-01186
SERVICIOS, C.A.	§ HOUSTON, TEXAS
	§ WEDNESDAY,
VERSUS	§ FEBRUARY 4, 2015
	§
LINDSAYCA, INC., ET AL	§ 11:03 A.M. TO 11:36 A.M.

INITIAL CONFERENCE

BEFORE THE HONORABLE FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	SEE NEXT PAGE
FOR THE DEFENDANT:	SEE NEXT PAGE
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1 HOUSTON, TEXAS; WEDNESDAY, FEBRUARY 4, 2015; 11:03 A.M.

2 THE COURT: All right. This is Gazprom Latin
3 America Servicios -- oh, I should have put on my accent --
4 (General laughter.)

5 THE COURT: -- Servicios, C.A. versus Lindsayca --

6 MR. ESCOBAR: Lindsayca.

7 THE COURT: -- Lindsayca, Inc., et al. All right.
8 So there are several motions that are pending --

9 ELECTRONIC RECORDING OFFICER: Could you all please
10 announce your names for the Record?

11 MR. AURZADA: Yes, ma'am. Keith Aurzada and James
12 Bookhout of Bryan Cave on behalf of Gazprom Latin America
13 Servicios, C.A.

14 THE COURT: All right.

15 MR. ESCOBAR: Your Honor, Manuel Escobar appearing
16 on behalf of Jean-Marc Pivert.

17 THE COURT: Okay. And who is that?

18 MR. ESCOBAR: He is a party that the, I guess the
19 original movant is seeking to depose.

20 THE COURT: Okay. And the Defendants aren't
21 represented here at our hearing?

22 MR. AURZADA: Your Honor, if I might, I'd like to
23 give a little bit of background. This is kind of an odd duck.
24 It was an exotic animal --

25 THE COURT: I know Judge Harmon made an order and

1 then I did something and --

2 MR. AURZADA: Yeah, so procedurally --

3 THE COURT: -- now she's asking me to reconsider
4 something she did.

5 MR. ESCOBAR: There's actually just one motion,
6 Judge, before the Court right now.

7 THE COURT: Yeah, which one is that?

8 MR. ESCOBAR: The motion to vacate, Your Honor.

9 THE COURT: Motion to vacate that was filed by
10 Jean-Marc Pivert on September 2, and a response was filed
11 September 22. It's Document Number 16. Go ahead.

12 MR. AURZADA: That's right. So, Your Honor, this is
13 a proceedings under 28 USC 1782, which is to obtain testimony
14 and evidence in aid of a foreign proceeding. So the real
15 over-arching policy of this provision of 28 USC is to make US
16 courts available for matters -- where there is discovery that
17 can be taken in the United States to proceed -- to assist
18 proceedings that are taking elsewhere, so over-arching.

19 What happened is my client, Gazprom, hired Lindsayca
20 to build a gas plant in Venezuela. As it relates to Jean
21 Pivert, it would -- the purpose of the discovery is for my
22 client to determine was he actually working for the supplier
23 as well as his employer, Gazprom, simultaneously. That's the
24 allegation.

25 There's anecdotal evidence that we put in our papers

1 to suggest that. So we filed a motion, opened a miscellaneous
2 proceeding to get this discovery, and it was ordered by Judge
3 Harmon that our application was granted to take a deposition
4 and to get production of documents.

5 The response to numerous service requests that are
6 in the pleadings was absolute crickets (phonetic) from
7 Mr. Pivert. So then we filed a motion to compel, that was
8 granted, a second motion to compel was granted.

9 And then opposing counsel got involved and there was
10 some allegations made concerning whether or not notice was
11 received. I don't think that needs to be resolved for
12 purposes of the motion to vacate, because clearly notice has
13 been received, he's hired counsel, counsel's made an
14 appearance going back to September of this year. So now
15 Mr. Pivert is aware of this.

16 There is nothing in the motion to vacate that would
17 suggest even remotely that the previous grant of the request
18 by Judge Harmon should be overturned. And so at this point,
19 to me, where this hearing needs to go is just getting on with
20 the deposition scheduling and the production of the documents.

21 And if that is not going to be the case, then we
22 need to reschedule and come back with Mr. Pivert so that he
23 can answer why he should not be subject to discovery if and
24 when he comes to the United States.

25 THE COURT: And where is he?

1 MR. AURZADA: Well --

2 MR. ESCOBAR: In Venezuela, Your Honor, and he's
3 always been in Venezuela during the entire proceedings.

4 MR. AURZADA: Your Honor, I want to be real clear on
5 that point, that where he lives is not the test under Section
6 28 USC 1782. It's where he resides or can be found. And so
7 when you look at the case law, the case law speaks with one
8 voice here, and I can get into the cases, but even just,
9 sojourning is the word that the 2nd Circuit used, which means
10 to take a trip to, is enough.

11 And so there are two facts that are critical here.
12 One, Mr. Pivert owns real estate in Texas. Second, he's been
13 here before. And I guess the third point is that he has
14 formed a corporation under the Texas Secretary of State in the
15 past. So he can be found here, and that's the purpose of this
16 statute.

17 Now if he never comes back to the United States,
18 then I guess we really won't be able to take his deposition,
19 because we're going to apparently need the marshals to go
20 gather him up and bring him for the deposition. But that's
21 why we need the order, so that he can't pop around the globe
22 and evade the discovery to which we're entitled.

23 THE COURT: Or at least not pop around the United
24 States.

25 MR. AURZADA: Yes, Your Honor. Oh, that's exactly

1 right. You're exactly right. Shouldn't be able to pop around
2 the United States. That's right.

3 THE COURT: Anywhere in the United States.

4 MR. AURZADA: He should be subject to jurisdiction
5 and a deposition. That's the purpose of this statute.

6 THE COURT: Okay. Okay.

7 MR. ESCOBAR: Judge --

8 THE COURT: I'd like to hear your point of view.

9 MR. ESCOBAR: Yes, ma'am. First of all, the statute
10 says that -- and I'll read from the statute, it says,

11 "The District Court in the district in which a
12 person resides or is found and order him to give his
13 testimony."

14 All right. That's the very first thing. And
15 counsel said that, Oh, we just need to move on with the
16 deposition because nothing in the motion suggests that we're
17 saying that the Court improperly issued that order. That's
18 the whole basis of the motion to vacate.

19 Our position is that the order was improperly
20 entered. And certainly my client did not have notice of
21 either the motions or the Court's order subsequent to the
22 Court entering those orders. And he hired me in connection
23 with -- once he found out about the Court's orders, then he
24 hired me, and of course we filed a motion to vacate the
25 orders.

1 And it's certainly our position that, to begin with,
2 that the Court improperly entered those orders. Counsel says
3 that they need this deposition with regard to some underlying
4 litigation. The motion that is filed, their first position is
5 that the order is needed in connection with litigation that's
6 pending in Venezuela. Not pending in the United States, but
7 pending in Venezuela is where the litigation -- at least
8 initially when their first motion was filed, that's what they
9 were alleging.

10 Well, Judge, they've settled the underlying
11 litigation in Venezuela. That litigation, it's my
12 understanding, is no longer pending. I talked to counsel
13 earlier briefly and he did indicate to me that that -- that
14 they did settle that litigation. And so there is not
15 litigation in Venezuela present at present.

16 Now he did intimate that they may file a lawsuit
17 against my client, you know, they may initiate some
18 litigation. I mean they may do a lot of things. But the
19 reality of it is, is right now as we sit here, there is no
20 litigation pending, or at least that litigation has been
21 settled between all the different parties, Gazprom, Lindsayca,
22 there's two Lindsayca corporations, one's a Venezuela
23 corporation, one is a Texas corporation, and both -- they
24 settled with everybody. So there's no litigation pending in
25 Venezuela.

1 Second of all, Judge, a fairly -- I mean I think
2 it's a fairly flippant position to take to say that, Well, we
3 can ignore the statute, the statute's not important, there's
4 already been an order and so we need to move on and just make
5 sure that we have these -- this deposition taken.

6 The evidence that's before the Court, and we've
7 submitted affidavits with regard to my client's residence. My
8 client is a resident of Venezuela. He's not a resident of the
9 United States. The last time he was in the United States
10 was -- I believe it was in March of 2013, which is over a year
11 before this motion was ever filed. This motion was filed in
12 May of 2014, the last time he was in the United States was in
13 March of 2013, about 12 to 14 months before the motion was
14 even filed.

15 He does not come to the United States regularly.
16 Again, he hasn't been here at all since then. Resides in
17 Venezuela. And in all of this they know that he resides
18 there. He owns a house in -- I believe it's Spring, Texas if
19 I'm not mistaken, Judge. But certainly within this district.
20 But he hasn't even been to that house since March of 2013.

21 We've submitted an affidavit of a person who
22 actually sits, you know, house sits, or stays at the house,
23 and based -- and what that affidavit says is that I mean he
24 doesn't come here. You know, he hasn't been here in quite
25 some time. The only previous time before that he says that he

1 was here in March of 2013 and -- he left in March of 2013 and
2 he had been here for about three months.

3 He was here as a tourist, he did whatever he was
4 going to do, he left. Of course this thing doesn't happen for
5 another -- over another year. Before that he did reside in
6 the United States in like -- and it's in the motion, I believe
7 it's 1991 to '94 if I'm not mistaken. He attended LSU in
8 Louisiana, and that was in 1991 to 1994 he attended here. I
9 don't think that makes him -- none of these things make him a
10 resident of this district, and that --

11 THE COURT: What about his corporation?

12 MR. ESCOBAR: The corporation actually is --
13 forfeited its existence, it doesn't even exist anymore. He
14 forfeited existence last year. It's a corporation that they
15 created. As I understand it never really did anything. And
16 again, he forfeited its existence. I think counsel even
17 submitted to the Court proof, I mean it's their evidence,
18 submitted proof that the corporation forfeited its existence
19 over a year ago. And so I mean there is no corporation here.

20 The only other evidence they offer is they offer a
21 business card, which we don't know when this business card
22 even was prepared or when it was used. There's some case law
23 that addresses this. And so they used the business card.

24 And basically what it would do is that the Texas
25 corporation, Lindsayca, would receive certain documents or

1 telephone calls and they would forward those to him in
2 Venezuela. But he -- on his business card he had the address
3 here in Houston. All right. In his affidavit he tells the
4 Court that it's been over two years since they even used that
5 practice of forwarding phone calls and forwarding mail.

6 So I mean it's been some time so I don't know how
7 counsel, again, can argue, one, he's a resident here, and two,
8 he can found here because he owns a house here. Now how does
9 that make logical sense? I mean Texas law does provide that
10 foreign nationals can own property in this state. I mean
11 there's a specific statute that talks about that, so there's
12 nothing illegal or improper about anything like that.

13 He tells you in his affidavit that that's an
14 investment property, and he's maintained that property since
15 that time. But because he owns a house that makes him found
16 in this district? The cases that do exist out there are
17 cases -- and there's not a lot of them, but there are some
18 cases out in New York in particular -- but there are some
19 cases where people come here periodically, they travel here.
20 Right. Yes, they own a house, in one particular case a
21 gentleman owned a house near New York City, but he would come
22 to the house periodically, he would stay there on occasion.

23 And so the Court said that that was enough to -- and
24 he was served -- actually, he was actually served, personally
25 served with a subpoena in that particular district, so the

1 Court said, Hey, he's found in that district because he was
2 served -- number one, he was served with a subpoena in this
3 district, and number two, he has a house here that he goes to
4 periodically.

5 Mr. Pivert doesn't come to the United States. He
6 hasn't been here for -- again, since March of 2013, and before
7 that he hadn't been here since 1994 as I understand. So how
8 you can jump from he has a house here to that makes him being
9 found here is illogical.

10 The other point, Your Honor, is that my client says
11 he never received any of the motions, he didn't receive the
12 Court's orders. The evidence that they've submitted are
13 things like they hand-delivered a copy of the Court's order to
14 the house in Spring. Their own summary judgment -- or their
15 evidence that they submitted to the Court is -- are affidavits
16 from people who delivered those. One of the affidavits says,
17 We delivered the order and there was no one there, so we left
18 them on the porch. That was their hand-delivery.

19 The other one is that they delivered it and there
20 was a gentleman by the name of Michael Drake who was living
21 there -- that's the gentleman who I alluded to earlier -- and
22 Michael Drake accepted it. Michael Drake has submitted an
23 affidavit where he says that this guy from some -- we're
24 talking about a delivery service, we're not talking about
25 anybody -- more than that, it was just a delivery service guy

1 that delivered a package and the delivery service guy said,
2 Here, take it, all you're doing is accepting it, you know,
3 that way I can say that I delivered it. That's it.

4 And he told -- in his affidavit, he tells us that he
5 told the delivery guy, you know, if this is for Michael
6 Pivert, he doesn't -- or, Jean-Marc Pivert, he doesn't live
7 here, he lives in Venezuela. And that's when the delivery man
8 said, Well, just accept it, you know, that's all you're doing,
9 you're just taking the package. So he wasn't there. He could
10 not be found in this district.

11 And I believe that the Court has to determine that
12 he's either a resident or that he can be found in this
13 district. And I'm talking about at the time either the
14 motion's filed or that he's served with a subpoena or
15 something. And I believe those are jurisdictional, Your
16 Honor.

17 Unless the Court can make that finding, and there's
18 case law that counsel himself cites some of it, that says you
19 have to make those findings first. If you don't make those
20 findings, then you can't compel somebody to come all the way
21 from Venezuela to have his deposition taken in a case that's
22 already been settled and it's my understanding has been
23 dismissed in Venezuela.

24 It just, again, doesn't make logical sense that you
25 would do that. He doesn't live here, he doesn't reside here,

1 he cannot be found in this district. And I believe that those
2 are jurisdictional issues that the Court needs to resolve
3 first before it can even consider the issuance of the order.

4 These orders that we're talking about that he's
5 seeking to compel my client on, find him in contempt of court,
6 et cetera, those are orders that were entered without the
7 benefit of my client having ever received the motions to begin
8 with, the applications, my client ever having responded to
9 them. Of course he didn't receive them, he didn't respond to
10 them. And so they issued orders.

11 So counsel wants to make it seem as if, oh, all this
12 has already been determined. The Court's already determined
13 all these things, that he's a resident, that he can be found
14 here, all these things have been determined. I don't frankly
15 know, Judge, what the Court did before it issued the orders.
16 I mean the Court did issue orders and they're there, they're
17 here. And those are the orders, again, we're asking the Court
18 to vacate. But the reality of it is, those were issued
19 without the benefit of my client having made any presentation
20 whatsoever.

21 THE COURT: Was your client involved in that
22 litigation in Venezuela?

23 MR. ESCOBAR: No, he's not a party to it.

24 THE COURT: He was not.

25 THE COURT: He was not a party to it, is not --

1 well, there's no litigation now.

2 THE COURT: There's not now but was he a party to it
3 then?

4 MR. ESCOBAR: No, ma'am.

5 THE COURT: Does the litigation need to be pending
6 for this statute to apply?

7 MR. AURZADA: Absolutely not. It can be -- this is
8 an aid that can be used to investigate potential proceedings
9 to be commenced.

10 THE COURT: Okay.

11 MR. AURZADA: And so I want to make sure that we
12 don't mix apples and oranges here talking about jurisdiction.
13 Okay. This is not an attempt by Gazprom to sue Mr. Pivert in
14 the United States. This is an attempt to seek discovery. So
15 it's a different standard altogether and so Section 1782
16 authorizes the United States to compel any person who resides
17 or is found in the district to provide discovery.

18 So I'm going to read something that the 2nd Circuit
19 observed in just construing 28 USC 1782.

20 "Congress amended 1782 in part --"

21 -- and this was done in the '60s --

22 "-- by striking out the word residing. Thus the
23 statute, as amended, allowed the federal courts to
24 authorize the deposition of any witness within the
25 United States. According to the House report on the

1 amendment, the change was intended to correct
2 restrictive language in Section 1782 and permit
3 depositions in any judicial proceeding without
4 regard to whether the deponent is residing in the
5 district or only sojourning there. By definition a
6 sojourn is a temporary stay as traveler in a foreign
7 country."

8 So what the 2nd Circuit is here saying is look at
9 that amendment that was done in the '60s to this section. It
10 was intentionally made broad to not include a residency
11 requirement.

12 So then when you look at the cases and you look at
13 our papers, factors to determine whether or not you have --
14 you can be found include the ownership of property, the
15 location of filing for tax purposes. I would note that the
16 taxes are paid on this real property that is owned by
17 Mr. Pivert in -- here in -- Your Honor, I have drawn a --
18 Harris County, sorry.

19 Mr. Pivert is employed by a US company, Lindsayca,
20 and he has spent time in the United States, obviously enough
21 time to get a four-year college degree as well as own an
22 investment property. You know, his affidavit says that the
23 home in Spring, Texas is an investment property.

24 So what we are not doing is applying a
25 jurisdictional standard for personal jurisdiction where we

1 have to look at ties to the jurisdiction. The point is, is if
2 you can be found in the United States, you can be subject to
3 discovery here. It doesn't mean he's going to be sitting in
4 the witness chair as a party to a litigation. We are looking
5 for aid of discovery under that -- under 28 USC Section 1782.

6 THE COURT: Okay. What is it you want to discover
7 from him?

8 MR. AURZADA: Bottom line it is my client's position
9 that at the same time he was managing on my client's behalf
10 the construction of a gas plant in Venezuela by Lindsayca, he
11 was also working for Lindsayca. In other words, he was
12 employed by both the owner of the facility and the --

13 THE COURT: Which is his.

14 MR. AURZADA: Gazprom was having the facility
15 constructed, Lindsayca was doing the construction.

16 THE COURT: So he was being paid by both of them?

17 MR. AURZADA: That's what we believe and we need the
18 discovery to discern that.

19 THE COURT: Okay. And then what?

20 MR. AURZADA: If that happens and we learn that it
21 was, in fact, the case, Your Honor, an evaluation will be made
22 whether or not there is jurisdiction to sue him here or in
23 Venezuela or in France.

24 THE COURT: What happens with the Venezuela
25 litigation? Can you enlighten me about that?

1 MR. AURZADA: That's a great question. Yeah, there
2 was a settlement reached -- it was a \$43 million contract,
3 there was a settlement reached between Gazprom, my client, and
4 Lindsayca in which Gazprom did not pay the remaining balance
5 due under an invoice and, in fact, received \$10,000 back from
6 Lindsayca. Which seems like a very small sum, you know, given
7 the size of the contract, but the last invoice was a
8 substantial invoice.

9 THE COURT: And how much money did you claim that
10 you paid Mr. Pivert, you know, what's your dispute valued at
11 regarding him?

12 MR. AURZADA: I don't have that fact in front of me.
13 And if it was determinative to the Court I will be happy to
14 find out and --

15 THE COURT: It's not really. I'm just trying to
16 find out background information.

17 MR. AURZADA: Yes, Your Honor.

18 THE COURT: You know, really you're just potentially
19 complaining about paying him when he was also being paid by
20 Lindsayca?

21 MR. AURZADA: Yeah, I don't think it's that simple
22 because --

23 THE COURT: No.

24 MR. AURZADA: -- there's the possibility that we
25 over-paid substantially in terms of cost overruns, materials,

1 time and expenses under the underlying contract, which is, you
2 know, much, much more complicated than just what was his
3 salary. Because if you have your on-the-ground manager in
4 Venezuela working for the supplier of a \$43 million contract
5 simultaneously, there are all kinds of potential bad things
6 that could happen.

7 THE COURT: And not loyalty to you --

8 MR. AURZADA: Yes, Your Honor.

9 THE COURT: -- necessarily. Okay. Okay. So your
10 client, Mr. Escobar, does not want to give his deposition
11 about these matters. Right?

12 MR. ESCOBAR: I don't think he does, Judge.

13 THE COURT: No matter where.

14 MR. ESCOBAR: Oh, I don't know no matter where. I
15 talked to counsel, why don't you go depose him in Venezuela.

16 THE COURT: Would he be willing to do that?

17 MR. ESCOBAR: I don't know if he would, Judge, or
18 not. I've been hired to represent him on this matter.

19 THE COURT: We should ask that. I mean we should
20 ask him if he'd be willing to do that, and if the, you know --

21 MR. ESCOBAR: Judge, if I may?

22 THE COURT: If you guys would be willing to go
23 there. I mean just it should be explored.

24 MR. ESCOBAR: You know, they filed a lawsuit against
25 him in Venezuela, they can -- I mean I would think that they

1 have some procedure where they can depose him in Venezuela.

2 THE COURT: I'm just asking.

3 MR. ESCOBAR: And, Judge, counsel only read you part
4 of that statute that he talked about a few moments ago, and it
5 said the District Court in which a person resides or is found,
6 and we order him to give his testimony or statement or to
7 produce a document or other thing for use in a proceeding in a
8 foreign or international tribunal. Well, there is no foreign
9 or international tribunal pending, because that's been
10 resolved, it's been settled. That's number one, Judge.

11 Number two, interestingly, he read for you from that
12 2nd Circuit case. I think that's the case that is really an
13 instructive case. Right. So it says that you either have to
14 reside there, right, or you have to be temporarily there.

15 THE COURT: Right.

16 MR. ESCOBAR: Right. You have to be temporarily
17 there. So he comes to the United States, we serve him with a
18 subpoena, he's temporarily there, he's got to give his
19 testimony. And I'm saying the United States. He has to be in
20 this district. Right. In this district.

21 And so he's not temporarily here. He certainly
22 doesn't reside here, and he's not temporarily here. Again, he
23 hasn't come here since March -- he hasn't even been in the
24 Houston area since March of 2013, and before that it was,
25 what, 20 years before that that he was here. You know, I

1 don't think that that is -- he is temporarily here at the time
2 that the petition is filed, or that the Court issues any kind
3 of orders.

4 THE COURT: Okay. Well, I understand -- I think I
5 understand the point of view of each side. But also I'd like
6 you to at least have a, you know, exploration of the
7 possibility of getting the deposition by going to Venezuela.
8 I mean it's not the other side of the world. And there are
9 other ways to get depositions besides even traveling there.
10 And if Mr. Pivert was amenable, and we don't know that he is,
11 but I'd like, you know, you to find out if he is, and you guys
12 to decide if you'd be willing to do it another way.

13 If he were, you know, agreeing to give his
14 deposition by video conference or whatever, for instance, or
15 even if you went there to take his deposition, maybe it's not
16 a bad place to visit. I don't know.

17 MR. AURZADA: Your Honor, we would be -- I mean we
18 are happy to entertain that, and I can't speak for my client.
19 The only thing I really want is I want the ability to enforce
20 that order against him in the United States.

21 MR. ESCOBAR: That's what he wants.

22 MR. AURZADA: So --

23 THE COURT: I understand.

24 MR. AURZADA: -- so for example if we agree -- no,
25 what I'm saying is we can agree to take the deposition in

1 Venezuela, but if he doesn't show for the deposition like he
2 did last time --

3 THE COURT: Where was that and when?

4 MR. ESCOBAR: Here.

5 MR. AURZADA: It was in Houston.

6 THE COURT: Oh, okay.

7 MR. AURZADA: It was in Houston. We noticed the
8 deposition, we noticed out best we could. He claims he didn't
9 get the notice. So if there an award of cost this would
10 obviously need to be dealt with in great detail.

11 THE COURT: So that would have required him to
12 travel here from Venezuela. Right?

13 MR. ESCOBAR: Yes.

14 THE COURT: Your notice --

15 MR. AURZADA: We're not sure that that's a correct
16 statement, that he's never been to Houston since the last date
17 and his deposition. But potentially, yes, he would have
18 had -- it would have required him to travel here.

19 THE COURT: Okay. Well, I just wonder, do you
20 really want his deposition, or do you want an order against
21 him. And if you really want his deposition, I think you
22 should at least explore other avenues of getting it. You
23 know, his lawyer's not telling me he's been instructed that he
24 will not give his deposition like by alternate means or in
25 another, you know, location. And now that he's got a lawyer,

1 that's a big plus, you know, so I think you should talk about
2 that.

3 MR. AURZADA: We're happy to discuss a deposition
4 under alternate means, so long as we get an order from the
5 Court so that we know that when and if he doesn't appear in
6 Venezuela or France or somewhere else on the planet --

7 THE COURT: France.

8 MR. AURZADA: -- that I have a recourse.

9 THE COURT: How about France?

10 MR. AURZADA: Sure.

11 MR. ESCOBAR: That would be nice. That would be
12 very nice.

13 MR. AURZADA: We'll take it.

14 (General laughter.)

15 MR. ESCOBAR: Judge, he wants an order so that he
16 can -- I mean one of the things that he pointed out in his
17 motions is that he wants an order so that he can ask a judge,
18 if the guy didn't show up for his deposition, to issue a
19 warrant for his arrest.

20 THE COURT: Where does your client work now?

21 MR. ESCOBAR: In Venezuela, Your Honor.

22 THE COURT: For whom?

23 MR. ESCOBAR: I'm not frankly sure, Judge, to be
24 quite candid with you. I'm really not sure.

25 THE COURT: All right. All right. But you can

1 easily contact him.

2 MR. ESCOBAR: I can contact him.

3 THE COURT: All right.

4 MR. ESCOBAR: And I'll tell the Court that I can
5 contact him. But again, him giving his deposition is one
6 thing, this Court issuing an order requiring his -- to give
7 his deposition under this particular statute is an entirely
8 different thing.

9 THE COURT: Okay. I'd like you to talk about -- I'm
10 going to resolve the motion. I'm going to have to think about
11 it a little bit before I enter an order, but in the meantime
12 I'd like you also to have this discussion about another way,
13 place, method of taking the deposition and whether or not, you
14 know, it could be done by agreement.

15 And if you're able to do that, I would like to you
16 let me know. One way or the other I'd like you to let me know
17 about your, you know, negotiation --

18 MR. AURZADA: Your Honor --

19 THE COURT: -- the result of your negotiation.

20 MR. AURZADA: -- may we, before the Court rules,
21 engage in those discussions and report back?

22 THE COURT: I would prefer you do it that way.

23 MR. AURZADA: And then when do we report back we may
24 include some additional facts that have sort of been raised by
25 the Court, and so if we could have a schedule of, you know,

1 reporting back and subsequent filings.

2 THE COURT: Do you want a subsequent briefing
3 schedule?

4 MR. AURZADA: I think that would be appropriate --

5 THE COURT: What do you suggest?

6 MR. AURZADA: -- in this case, Your Honor, because
7 it --

8 THE COURT: Today's the 4th.

9 MR. AURZADA: I would suggest two weeks for us, two
10 weeks for them.

11 THE COURT: All right.

12 MR. ESCOBAR: Judge, and I want to make sure the
13 Court understands this, right, you know, you have this motion,
14 you know, that's before the Court, and I frankly don't think
15 any more briefing on that motion is necessary. I think you
16 read the case law, you read what's been submitted, I mean I
17 think there's enough there for this --

18 THE COURT: What kind of additional briefing do you
19 want to do?

20 MR. AURZADA: Your Honor --

21 THE COURT: You say I've raised fact issues at our
22 hearing today.

23 MR. AURZADA: That's --

24 THE COURT: What is that, for instance?

25 MR. AURZADA: For instance whether or not he's been

1 back to Texas.

2 THE COURT: Oh.

3 MR. AURZADA: That sort of thing.

4 THE COURT: Okay.

5 MR. AURZADA: He has an investment property here. I
6 want to challenge that statement a little bit. I think that's
7 appropriate, and we can do that while we're having our
8 discussions as to whether or not there's a way to come back
9 and get a resolution, because the Court I think accurately
10 have said, Look, you now have lawyers involved, we've had the
11 bright lights of a hearing.

12 I've told the Court my honest opinion, which is I
13 want the discovery. I have no interest in just having an
14 order hanging over this man's head. I don't.

15 THE COURT: Well, then if you can --

16 MR. AURZADA: Because if we -- if we take --

17 THE COURT: -- get that, I really recommend that
18 you try to do it, you know.

19 MR. ESCOBAR: Judge, and what I was --

20 THE COURT: And two weeks for you and two weeks for
21 you, that'll give us time for, you know, Mr. Escobar to have
22 talks with Mr. Pivert and find out if there's some place you
23 guys could meet on the coast of France, somewhere like that.
24 That'll be -- okay.

25 (General laughter.)

1 MR. ESCOBAR: Judge, I'm going to --

2 THE COURT: I'm being silly, but I know -- I'm
3 serious that you should try to resolve it by agreement, and if
4 you can't, you will get two weeks from today to file
5 additional briefing. You'll get two weeks after that to file
6 any response to whatever they file. And then I'll make a
7 decision.

8 What were you going to say?

9 MR. ESCOBAR: Judge, what I was going to say is
10 that, you know, just the fact that we're, you know, even going
11 to talk to him, he's got, Venezuela lawyers, my client does,
12 and so I mean there's this dispute over there and they're
13 doing whatever they're doing over there. I have no idea what
14 they're doing in this Venezuelan court other than to know that
15 the case has been settled.

16 THE COURT: It's resolved.

17 MR. ESCOBAR: It's been settled.

18 THE COURT: Right.

19 MR. ESCOBAR: In its entirety. And so, you know, I
20 don't want the Court to think that by saying, All right, we'll
21 talk about this, well, Your Honor, I'm here conceding that the
22 Court, you know, properly issued an order, or can enter an
23 order in this case, other than an order denying their request
24 because, again, if the Court doesn't make a finding that he's
25 a resident here or may be found here, then the Court, you

1 know, can't issue an order. Again, an order other than
2 denying the request for the deposition. That's all that can
3 be entered.

4 THE COURT: Okay.

5 MR. AURZADA: Your Honor, we've got to make one
6 thing really clear here, which is the dispute that has been
7 resolved is the lawsuit against -- by Lindsayca against my
8 client in Venezuela. It has nothing to do with Mr. Pivert.

9 THE COURT: I understand.

10 MR. AURZADA: Okay.

11 MR. ESCOBAR: It's just that that's the underlying
12 lawsuit on which they first started.

13 THE COURT: Right. Now they're -- they have other
14 grounds for the request it sounds like.

15 MR. ESCOBAR: Maybe.

16 THE COURT: Potential litigation.

17 MR. AURZADA: Potentially.

18 MR. ESCOBAR: Maybe.

19 THE COURT: Yeah. Okay. Well, maybe the best way
20 to address everything is to give a deposition, but maybe not.
21 I mean it depends on, you know, your conversation with your
22 client and what you might be able to negotiate with your
23 opponent. So I'm going to just sit back for, you know, eight
24 more weeks -- I mean two -- four more weeks and allow that
25 effort to take place. And then after you finish the briefing

1 though, I'll try to resolve it very quickly.

2 MR. AURZADA: Will you want a subsequent hearing,
3 Your Honor, that we should set now, or will you want to just
4 hear it on the papers?

5 THE COURT: I don't there's a need for it. If there
6 really is a need for it, if something unusual happens, of
7 course I'd be happy to set another hearing. But right now I
8 don't think we need another hearing.

9 MR. AURZADA: Yes, Your Honor. Okay. Thank you.

10 MR. ESCOBAR: Judge, are you going to issue an order
11 with these dates or do we just --

12 THE COURT: No, I'm not. Today is the 4th -- let's
13 just make it part of the record -- today's the 4th, so two
14 weeks from today will be the 18th. Is that a holiday?

15 MR. ESCOBAR: I think the Monday is a holiday,
16 Judge. I'm not sure about Monday.

17 THE COURT: The 16th -- well, Monday the 23rd, is
18 that President's Day or something.

19 MR. ESCOBAR: I believe so, Judge.

20 THE COURT: Okay. So the two weeks from today is
21 the 18th, that would be the extension of time for the person
22 seeking relief to file additional briefing. And then two
23 weeks from that day, 25, and the 11th of March would be that
24 deadline for you, Mr. Escobar.

25 MR. ESCOBAR: Yes, ma'am.

1 THE COURT: Is that enough time?

2 MR. AURZADA: It's fine for us, Your Honor.

3 MR. ESCOBAR: It's fine for us.

4 THE COURT: All right. Thank you for appearing.

5 And I hope you're able to work out something. That's the best
6 way of course. All right.

7 MR. ESCOBAR: Thank you, Your Honor.

8 THE COURT: This hearing's adjourned.

9 MR. AURZADA: Thank you, Your Honor. May we be
10 excused?

11 THE COURT: Yes.

12 (Proceedings adjourned at 11:36 a.m.)

13 * * * * *

14 *I certify that the foregoing is a correct transcript*
15 *to the best of my ability from the electronic sound recording*
16 *of the proceedings in the above-entitled matter.*

17 /S./ MARY D. HENRY

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